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OFFICE OF PETITIONS

In re Application of :
Johan Soderdahl : DECISION ON PETITION TO
Application No. 10/717,916 : WITHDRAW HOLDING OF
Filed: 21 November, 2003 : ABANDONMENT
Attorney Docket No. 22362- :
00008-US :
:

This is a decision on the petition filed on 27 December, 2006, to withdraw the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

The application was held abandoned for failure to timely reply to the final Office action mailed on 6 December, 2005, which set a three (3)-month shorted statutory period for reply. Notice of Abandonment was mailed on 14 July, 2006. A petition under 37 CFR 1.137(b) was filed on 28 July, 2006, and was dismissed on 27 October, 2006.

Petitioners assert that the final Office action mailed on 6 December, 2005, was never received.

In the absence of any irregularity in the mailing of the final Office action, there is a strong presumption that the final Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the final Office action was not in fact received. The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office action would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c). The showing

outlined above may not be sufficient if there are circumstances that point to a conclusion that the final Office action may have been lost after receipt rather than a conclusion that the final Office action was lost in the mail.

A review of the record indicates that the Office action was properly mailed to the practitioner of record at the correspondence address of record at the time of mailing. Thus, there was no irregularity in mailing the Office action on the part of the United States Patent and Trademark Office.

In support, the petition includes a statement from the practitioner, Brian J. Hairston, stating that the Office communication was not received by the practitioner, and attesting to the fact that a search of the file jacket and docket records indicates that the final Office action was not received. A copy of the docket report where the non-received Office action would have been entered had it been received and docketed is attached.

The petitioner has made a sufficient showing of nonreceipt of the Office action. Accordingly, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The petition is **GRANTED**.

It is noted that applicant has filed a Request for Continued Examination (RCE) and a submission in reply to the final Office action mailed on 6 December, 2005, with the present petition. As such the Office action will not be remailed.

As the holding of abandonment has been withdrawn, the petition to revive filed on 28 July, 2006, is moot, since the application was not abandoned in fact. The petition fee will be credited to counsel's deposit account.

The application file is being referred to Technology Center Art Unit 3683 for consideration of the reply filed with the present petition.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.


Douglas I. Wood
Senior Petitions Attorney
Office of Petitions